

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

EARL “WAYNE” FLANAGAN,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Case No. CIV-07-674-F
	)	
CITY OF OKLAHOMA CITY,	)	
a municipal corporation,	)	
	)	
Defendant.	)	

**ORDER ON PROPOSITION III OF DEFENDANT’S MOTION IN LIMINE**

The court has now carefully considered Proposition III of Defendant’s Motion in Limine (doc. no. 47).


The court has granted summary judgment as to plaintiff’s claim under 38 U.S.C. § 4312. Section 4313(a)(1)(A) of Title 18 of the United States Code, which defendant relies upon to exclude any evidence of difference in status, applies to a claim under § 4312. The claim which is at issue is governed by 38 U.S.C. § 4311.

Section 4311 provides that “[a] person . . . shall not be denied . . . any benefit of employment by an employer on the basis of . . . membership, . . . performance of service, . . . or obligation.” Section 4303(2) of Title 38 of the United States Code defines “benefit of employment” as “any advantage, profit, privilege, gain, *status*, account or interest . . . that accrues by reason of an employment contract or agreement or an employer policy, plan or practice . . . .” 38 U.S.C. § 4303(2) (emphasis added). Because USERRA was enacted to protect the rights of veterans and members of the uniformed services, it must be broadly construed in favor of its military beneficiaries. Hill v. Michelin North America, Inc., 252 F.3d 307, 312-313 (4<sup>th</sup> Cir. 2001). Plaintiff

therefore can offer evidence of a difference of status of the gang and patrol division positions to support his claim. The lay opinions of these witnesses, if otherwise admissible, are admissible under Rule 701, Fed. R. Evid. – subject to the court’s discretion to place reasonable limits on cumulative or repetitions evidence. The court does not intend to permit seven witnesses (or anything close to that number) to tell the jury the same thing.

Proposition III is accordingly **DENIED**.

Dated this 7<sup>th</sup> day of March, 2008.

  
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STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE